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IN THE HIGH COURT OF KARNATAKA AT BANGALORE.

Dated the 28th day of May 1998.

BEFORE

THE HON'BLE MR. JUSTICE HARINATH TIJAHARI.

CIVIL REVISION PETITION NO.1875/1993.

BETWEEN:

M/s Ganga Maruthi,
Sri. Kanyaka Mansion,
No. 23, Ebrahim Sahib
Street, Bangalore, by
its Proprietor, Shakunthala
Gupta, Represented by its
Manager and G.P.A. Holder
D.P. Gupta

PETITIONER.

(By Sri. K.R. Nanjundaiah for petitioner)

AND:

- 1) Nagarai,
S/O Muniyappa,
Town Municipal Council,
Hoskote.
- 2) Muninagappa,
S/O Muniyappa,
Town Municipal Council,
Hoskote.
- 3) S.A. Ramprakash,
S/O Aswath Shetty,
Town Municipal Council,
Hoskote.
- 4) The Chief Officer,
Town Municipal Council,
Hoskote.
- 5) Byrappa, Accountant
Town Municipal Council
Hoskote.

RESPONDENTS.

(By Sri. H.V.Rajaram, for respondents).

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This Civil Revision Petition is filed under Section 18 of the Karnataka Small Causes Courts Act 1964 praying to set aside the Judgment and decree dated 19-1-1993 passed in S.C.10904/91 on the file of the Addl. Small Causes Judge, Bangalore, etc.,

This petition is coming on for hearing this day, the Court made the following:

O R D E R.

This Revision under Section 18 of the Karnataka Small Causes Court's Act 1964^{arises} from the Judgment and decree dated 19-1-1993 passed by the Addl. Small Causes Judge, Mayo Hall, Bangalore, in S.C.No. 10904/91 whereby plaintiff's suit for recovery of money was decreed in part. The plaintiff claim for a sum of Rs.9,999/- with interest and cost.

2. The trial Court decreed the suit against defendant No.1 who is respondent No. 1 for a sum of Rs.7,316/- with proportionate cost^{and} with interest at 6% per annum from the date of suit till the date of realization.

3. The plaintiff's case in the nutshell is that plaintiff who is revisionist in the case (hereinafter referred to as the plaintiff) has been the dealer in Television sets and

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the 1st defendant had approached the plaintiff to purchase Black and White T.V. set on credit basis on the undertaking given by defendant Nos. 4 and 5 along with Chief Officer, Town Municipal Council, Hoskote and Byrappa, Accountant, Town Municipal Council, Hoskote, and on the surety of defendants-2 and 3 Crompton Creaves T.V. set was sold to the 1st defendant on 6-2-1990 on credit and the 1st defendant had assured and made plaintiff to believe that he would pay the value of T.V. Set in 36 equal monthly instalments at the rate of Rs.236/- per month and in case of default penalty of Rs.100/- for each defaulting month.

4. First defendant has denied that he had approached the plaintiff to purchase T.V. Set on credit basis and he had agreed to pay the value of the T.V. in 36 equal monthly instalments at the rate of Rs.236/- and penalty of Rs.100/- for every default in payment of instalments. The plaintiff's case is that 1st defendant had paid only five instalments and remaining he did not pay inspite of repeated demands. So, the plaintiff filed the suit for recovery of money to the tune of Rs.9,999-00 though the total amount due on the date of suit was Rs. 10,460-00.

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5. Defendant No. 1 contested the suit. While defendants-2, 4 and 5 appeared in person and defendant No.3 remained absent. Defendant No.1 denied the plaintiff's case. He has pleaded and stated that he did not approach the plaintiff for supply of black and white television and had never agreed to pay the price in 36 instalments at the rate of Rs.236/-. He has not executed any delivery note to pay penalty of Rs.100/- for every default in paying the instalments. That the defendant No.4 had offered Black and White T.V. for Rs.3,500/- payable in monthly instalments and the fourth defendant had taken his signature on the blank papers assuring to deliver T.V. set after payment of half of the amount and that though deductions were made from his salary but no T.V. set was supplied to him either by the plaintiff or by the 4th defendant. Defendant No.1 denied his liability to pay the amount and prayed for dismissal of the suit with costs.

6. The trial Court after examining and appreciating the evidence on record held that the plaintiff has proved that Television set was sold to the first defendant on credit basis and that

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and ~~whether~~^{that} the plaintiff has proved that the 1st defendant had agreed to pay 36 instalments at the rate of Rs.236/- per month? The trial court decreed the suit for the sum mentioned above.

7. With reference to issue Nos.3, 4 and 5, the trial Court had recorded the findings that the plaintiff is not entitled to recover the default in payment of each instalment. It has also held that defendants-2 and 3 were sureties. It further found that the undertaking given by defendants-4 and 5 is unauthorised and could not be enforced. In result, the trial Court decreed the suit against the 1st defendant for Rs.7316/- with interest at the rate of 6% per annum from the date of suit till the date of realization, and dismissed the suit against defendants-2 to 5.

8. Having aggrieved by the order of the trial Court, the plaintiff ^{has} come up in revision and the only ground that has been raised for consideration is refusal on the part of the

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trial court to grant the decree at the rate of Rs.100/- per default as penalty for default in the payment of each instalments.

9. Learned counsel contended that the court below did not act according to law and prayed that the revision may be allowed and the decree may be modified and the claim may be decreed at the rate of Rs.100/- for the default committed by defendant No.1 in the payment of instalments as and when due.

10. The scope of jurisdiction of Section 18 of the Karnataka Small Cause Courts Act as *It is limited and not same as of Court of 1st appeal,* provided for revision and it reads as under:

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"Section-18: Revision of decrees and orders of Courts of Small Causes - The High Court for the purpose of satisfying itself that the decree or order made in any case decided by a Court of Small Causes was according to law may call for the case and pass such orders with respect thereto, as it thinks fit."

The scope of jurisdiction of Section 18 of the Karnataka Small Causes Courts Act is to

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see if the decree or order was made or the case was decided 'according to law'. This phrase 'according to law' has been the subject matter of consideration whether a decision is 'according to law', and when a decision may be held to be not in accordance with law or not according to law or ^{if be said if} ~~to~~ be contrary to law. In the case of HARI SHANKAR AND OTHERS -vs- RAO GIRDHARI LAL CHOWDHURY (AIR 1963 SC 698) their Lordships of the Supreme Court dealing with Section 35 of the Delhi Ajmer Rent Control Act 1952 dealt with expression "according to law" and in para-7 observed firstly pointing of distinction between appeal and the revision as under:

" The distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as fact, unless the the statute conferring the right of appeal limits the rehearing in some way as, we find, has been done in second appeals arising under the Code of Civil Procedure . The power to hear a revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law."

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Their Lordships in para-9 quotes with approval the law laid by Hon'ble Beaumont, C.J in the case of BELL & CO., -vs- WAMAN HEMRAJ, 40 BOM 125 (AIR 1938 Bom 223) as under:

"It is sufficient to say that we consider that the most accurate exposition of the meaning of such Sections is that of Beaumont, C.J. (as he then was) in BELL & CO., LTD. -vs- WAMAN HEMRAJ 40 Bom LR 125: AIR 1938 Bom 223) where the learned Chief Justice, dealing with Section 25 of the Provincial Small Cause Courts Act, observed:

"The object of Section 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision, as does S. 115 of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the court, which made the order, had no jurisdiction, or in which

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the court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the court ought not to have interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

This observation has our full concurrence."

A reading of the decision per se reveals that a decision would not be in accordance with law if there is miscarriage of justice due to mistake of law. So mistake of law coupled with miscarriage of justice has to be shown. This decision was followed by another decision of their Lordships of the Supreme Court in the case of MALINI AYYAPPA NAICKER (dead) by his Legal Representative etc., -vs- SETH MANGHARAJ UDHAVDAS

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FIRM BY MANAGING PARTNER, CHATHURBHUJ CHABILDAS (dead) by his legal representatives and others etc., (AIR 1969 SC 1344). In Malini Ayyappa Naicker's case it has been observed in this connection with reference to the earlier decision in which that question was considered viz., THE OFFICIAL RECEIVER, KHANPUR & ANOTHER -vs- ABDUL SHAKOOR AND OTHERS (AIR 1965 SC 920) and observed as under:

"All that it laid down to two cases is that High Court is not competent to disturb the finding of fact reached by the District Court even if reaching the finding it was required to take into consideration whether the statutory presumption is rebutted is a question of fact."

11. In the present case the learned trial Judge has observed what is mentioned in Ex.P.1 is 'including delay penalty and interest at Rs.100/- per month. A plain reading of the above that Rs.8496-00 that is mentioned in Ex.P.1 include the delay penalty and that it does not indicate that in addition to Rs.8496/- defendant agreed to pay penalty of Rs.100/- in other words, Ex.P.1 is not clear so as to liability of the defendant to pay penalty of Rs.100/- p.m.

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12. I have perused Ex.P.1 and do not find any reason to disagree with the trial courts findings. The trial Court has further observed that the handwriting in columns 3 and 4 in Ex.P.1 was entirely different from next two lines and it suspected the delay penalty was not there ~~in~~ ~~with~~ Ex.P.1. There is one more circumstance that creates suspicion. The plaintiff in the plaint has nowhere clearly stated that there was agreement and the defendant had agreed to pay the penalty of Rs.100/- for every default of instalment. In para-3 what has been stated is that 1st defendant assured and made the plaintiff to believe that he would make the payment in 36 equal monthly instalment of Rs.236/- each and in case of a single default, he would pay a sum of Rs.100/- for every defaulting month as penalty, incidental charges over due interest upto the date of final payment. It means that there was no agreement in writing nor any writing ^{#1 for #} the payment of the penalty of Rs.100/- for default in monthly instalments. The plaintiff's case is that defendant No.1 assured the plaintiff and made plaintiff believe about such thing. It is not the plaintiff's case that there was an agreement and that it was

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mentioned and Ex.P. 1 is nothing but a delivery of the challan. Defendant No.1 has denied the case that he had approached the plaintiff and/or given him any such assurance. The plaintiff's case is that he had contacted the Chief Officer, Town Municipal Council, Hoskote, concerned. He might have contacted the Chief Officer, Town Municipal Council. A suggestion was put to P.W.1 to the effect that no contract was entered into between the plaintiff and the defendant. In reply he denied that suggestion and stated 'It is false to say that no contract was entered into between him and the 1st defendant. I have no documents to show that the 1st defendant had personally requested me to supply the T.V. set. I have got other documents other than delivery challan Ex.P.1 to show that defendant No.1 has agreed to my terms and conditions. It is false to say that I have no such documents and hence, ~~he~~ ^{he} has not produced before the Court." If he had any other documents to show that defendant No.1 approached him and had entered into an agreement he should have filed the document before the

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Court. He has not filed said or alleged documents for no rhyme or reason.

13. It is well settled principle of law if there are material documents which may throw light on the question involved and the documents are in possession of a party proceedings and that party in possession of such material does not produce the adverse presumption has to be raised against that party. So adverse presumption arises and can be raised against plaintiff's plea in this regard ^{and it may} be held that defendant's case that he had never entered into an agreement is correct one, I do not as such find any wrong with trial courts decision or finding on this point.

14. The learned counsel for the plaintiff applicant relying on Section 74 of the contract Act, urged in case breach of terms of Contract a party may be entitled to claim compensation from party committing breach. But the Court is not bound to award compensation at the rate as claimed by the claimant-plaintiff. Section ^{47 of the Contract Act 47} 74 has not been brought to the notice of the

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trial Court. But taking this Section in view, I think it proper that interest may be awarded as compensation to the appellant but not at the rate of Rs.100/- per instalment. The plaintiff may be awarded compensation to the tune of Rs.310/- for 31 instalments at the rate of Rs.10/- per instalment. The failure on the part of the Court below to consider the provision of Section 74 of the Contract ^{Act} necessarily introduced an element of breach of law or error of law resulting in injustice being occasioned to a certain extent. This is considered in my opinion.

15. The revision petition deserves to be allowed to this extent, by modifying the trial Court decree. Keeping Section 74 of the Contract Act in view, the decree is modified by awarding a sum of Rs.310/- in all towards the penal interest and suit will stand decreed for this sum of Rs.310/- over and above amount it has been decreed by trial Court. Thus revision is thus allowed in part and trial court decree will stand and is modified as above. Cost of revision is to born the revision petitioner himself.

Sd/-
JUDGE